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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,839

03/15/2005

Uwe Leiner

48364

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1609 7590 08/21/2008

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EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

08/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,839	<b>Applicant(s)</b> LEINER ET AL.	
	<b>Examiner</b> J. Gregory Pickett	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 May 2008 has been entered.

Claims 1-4 and 6-12 are pending in the application. Claim 5 has been canceled.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

3. Claims 1-4 and 6-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 12, it is unclear as to whether the cover film IS the stabilizing film, or has an extra film overlying the cover film.

Claims 2-4 and 6-11 are dependent upon claim 1 and are rejected for the above reasons.

***Claim Rejections - 35 USC § 103***

4. Claims 1-4, 6-10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marckardt (US 3,756,386) in view of Baker et al (US 4,341,302) and Maletz et al (EP 1153579 A2; provided by applicant).

Claims 1 and 6: Insofar as the scope of the claim may be determined, Marckardt discloses a package (see Figure 1) comprising a first chamber 3 containing a flowable substance (Col. 2, lines 16-20), and a second chamber 2; wherein the first and second chambers are sealed in a liquid-tight manner; the package formed with a cover film 1 having a first barrier foil of metallic material (Col. 2, lines 23-25), and a base film 4 as a composite film (layers 5/6) having a second barrier foil 5 of metallic material that is softer than the first foil (see for example, Col. 1, lines 47-54); and a zone 9 connecting the first and second chambers. Marckardt functions as claimed and merely lacks the express disclosure of cover film 1 being a composite film. Marckardt suggests the package made from plastic-foil packaging techniques (Col. 2, lines 21-23).

Baker teaches that a plastic-foil composite structure of plastic resin and metal was known in the art at the time the invention was made (see Col. 4, lines 47-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide cover 1 of Marckardt in a composite material in order to provide indicia on the package. In such an arrangement, the plastic portion may be considered a stabilizing film. Since polyolefin was a known material at the time of the invention, the selection of polyolefin for use as the plastic resin would have been an obvious matter of design choice. It has been held to be within the general skill of a worker in the art to

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select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Maletz et al teaches the provision of a weakened zone (see for example Figure 19, item 2) for penetration by an applicator. Although Marckardt teaches partial or complete removal of one layer by peeling, Maletz et al teaches an alternate and equivalent means for accessing the mixture. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the weakened zone of Maletz for the peeling access of Marckardt-Baker. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

As shown in Figure 19, Maletz anticipates a scored area as the weakened zone. As evidenced by claim 6, applicant intends for the scope of the "recess" to encompass scoring. Accordingly, Maletz suggests a recess as the material weakening.

Claim 2: Marckardt anticipates a base film 4 as a composite film (layers 5/6), the inner of which would constitute a sealing layer. Baker teaches that a plastic-foil composite structure of plastic resin and metal was known in the art at the time the invention was made (see Col. 4, lines 47-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to base film 4 of Marckardt in a composite material in order to provide indicia on the package. Since polyolefin was a known material at the time of the invention, the selection of polyolefin for use as the plastic resin would have been an obvious matter of design choice. It has been held to be within the general skill of a worker in the art to select a known material on the basis

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of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. As to the dimensions, it has been held that, where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than a prior art device, the claimed device is not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

Claim 3: Marckardt discloses a common rim 12/14 and anticipates a welded seam as an alternative to gluing (see for example, Col. 3, lines 51-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the welding for the gluing in order to obtain a more secure seal.

Claim 4: Marckardt anticipates a single weld seam 8 (see for example, Col. 3, lines 5-7).

Claims 7 and 8: Marckardt discloses weakened weld seam 9.

Claim 9: Marckardt discloses base film 4 with outer film 6.

Claim 10: Marckardt discloses standing areas (flat portion of the film) on both films (see Figure 1).

Claim 12: Marckardt-Baker-Maletz, as applied to claim 1, discloses the provision of a package with substance in both chambers (see for example Col. 1, lines 3-9), exerting an external pressure on the first chamber (Col 3, lines 14-19), mixing the substances (Col. 3, lines 19-20), and dispensing the mixture (Col. 3, lines 20-25).

Although Marckardt teaches partial or complete removal of one layer by peeling, Maletz

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et al teaches an alternate and equivalent means for accessing the mixture by the provision of a weakened zone (see for example Figure 19, item 2) for penetration by an applicator. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the weakened zone of Maletz for the peeling access of Marckardt-Baker. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marckardt-Baker-Maletz as applied to claim 1 above, and further in view of Peuker et al (US 6,105,761; provided by applicant).

Marckardt-Baker-Maletz, as applied to claim 1 above, discloses the claimed invention except for the two or more units.

Peuker et al teaches an array of dispensing packages (see Figure 6) for simplified storage (see Col. 3, lines 27-31), and for said purpose, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Marckardt-Baker-Maletz in an array. Such a modification is considered a mere duplication of parts.

### ***Response to Arguments***

6. Applicant's arguments filed 19 May 2008 have been fully considered but they are not persuasive.

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Applicant's argument hinges on the assertion that Marckardt does not have a stabilizing film with a recess. As applied above, Baker teaches that a plastic-foil composite structure of plastic resin and metal (see Col. 4, lines 47-53). In such an arrangement, the plastic portion may be considered a stabilizing film. Further, as shown in Figure 19, Maletz anticipates a scored area as the weakened zone, and as evidenced by claim 6, applicant intends for the scope of the "recess" to encompass scoring. Accordingly, Maletz suggests a recess as the material weakening.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/  
Primary Examiner, Art Unit 3728